

BARRY E. HINKLE, Bar No. 071223  
 NICOLE M. PHILLIPS, Bar No. 203786  
 BRUCE A. HARLAND, Bar No. 230477  
 WEINBERG, ROGER & ROSENFELD  
 A Professional Corporation  
 1001 Marina Village Parkway, Suite 200  
 Alameda, California 94501-1091  
 Telephone 510.337.1001  
 Fax 510.337.1023

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

KEN WALTERS and JOHN BONILLA, in  
 their respective capacities as Trustees of the  
 OPERATING ENGINEERS HEALTH AND  
 WELFARE TRUST FUND FOR NORTHERN  
 CALIFORNIA; BOARD OF TRUSTEES OF  
 THE PENSION TRUST FUND FOR  
 OPERATING ENGINEERS; BOARD OF  
 TRUSTEES OF THE PENSIONED  
 OPERATING ENGINEERS HEALTH AND  
 WELFARE FUND; BOARD OF TRUSTEES  
 OF THE OPERATING ENGINEERS AND  
 PARTICIPATING EMPLOYERS PRE-  
 APPRENTICESHIP, APPRENTICE AND  
 JOURNEYMEN AFFIRMATIVE ACTION  
 TRAINING FUND; BOARD OF TRUSTEES  
 OF THE OPERATING ENGINEERS  
 VACATION AND HOLIDAY PLAN,

Plaintiffs,

v.

ENGEO INCORPORATED, A California  
 Corporation

Defendant.

No. C05-02404 MHP

**STIPULATION FOR ENTRY OF  
 JUDGMENT; ~~PROPOSED ORDER~~**

The parties hereby stipulate and agree as follows:

1. Ken Walters and John Bonilla, In Their Respective Capacities As Trustees Of The

1 Operating Engineers Health And Welfare Trust Fund For Northern California; Board Of Trustees  
 2 Of The Pension Trust Fund For Operating Engineers; Board Of Trustees Of The Pensioned  
 3 Operating Engineers Health And Welfare Fund; Board Of Trustees Of The Operating Engineers  
 4 And Participating Employers Pre-Apprenticeship, Apprentice And Journeymen Affirmative Action  
 5 Training Fund; Board Of Trustees Of The Operating Engineers Vacation And Holiday Plan,  
 6 ("Trust Funds") have brought the above-captioned action against Defendant Engeo Incorporated, A  
 7 California Corporation ("Engeo").

8         2. Plaintiff Trust Funds in this action sought \$323,332.20 in unpaid fringe benefit  
 9 contributions, interest, and liquidated damages found to be due and owing through the period 2000  
 10 to 2002 pursuant to an audit conducted by the Trust Funds. Said amounts are due and owing  
 11 pursuant to the Master Agreement for Northern California Operating Engineers Local Union No. 3  
 12 ("Master Agreement") and the relevant trust agreements establishing the Trust Funds. The parties  
 13 hereby stipulate and agree to settle this action under the following terms:

14         3. Engeo agrees to have judgment entered against it in the amount of \$43,622.25,  
 15 which constitutes known claims for delinquent fringe benefit contributions, underreported hours,  
 16 interest and attorneys' fees and costs owed to Trust Funds and provided for in the foregoing  
 17 paragraph 2.

18         4. The parties hereto stipulate and agree that Engeo shall remit the full amount of  
 19 \$43,622.25 in one lump payment within five (5) business days after execution of the Stipulation for  
 20 Entry of Judgment. This lump sum payment shall be made by cashiers check, made payable to the  
 21 Operating Engineers Local Union No. 3 Trust Funds, and mailed to the Operating Engineers Local  
 22 Union No. 3 Trust Fund, c/o the law offices of Weinberg, Roger and Rosenfeld, 1001 Marina  
 23 Village Parkway, Suite 200, Alameda, CA 94501, Attn: Nicole M. Phillips.

24         5. The parties hereto further stipulate and agree that if Engeo fails to make the lump  
 25 sum payment of \$43,622.25 pursuant to the exact terms as provided for in the foregoing paragraph  
 26 4, the Trust Funds may then execute upon the Judgment for the full amount of \$323,332.20, minus  
 27 the amount of any payments actually received, together with the interest that shall have accrued

1 thereon. Failure of the Trust Fund to exercise such option shall not constitute a waiver of the right  
2 to exercise it in the event of a continuing or subsequent default.

3 6. Additionally, Engeo agrees to remain current on all fringe benefit contributions for  
4 a period of not less than eighteen (18) months following execution of the Stipulation for Entry of  
5 Judgment, not yet due and payable, which become due and payable to the Operating Engineers  
6 Trust Funds. It is a material condition of this Stipulated Judgment that Engeo remain current on all  
7 such fringe benefit contributions and failure to do so shall constitute default.

8 7. If Engeo defaults in the making of any of said payments or any part thereof, and if  
9 the Trust Fund consults legal counsel with respect thereto, there shall be added to Engeo's  
10 obligation under this Stipulation for Entry of Judgment reasonable attorneys' fees, court costs and  
11 all other reasonable expenses incurred by the Trust Fund in connection with such suit or claim,  
12 including any and all appellate proceedings therein.

13 8. The provisions set forth in this Stipulation for Entry of Judgment are not in violation  
14 of any state or federal law. However, if any portion of said stipulation is found to be in violation of  
15 any state or federal law, then the total amount of the Stipulation for Entry of Judgment then due  
16 shall immediately become due and payable.

17 9. Plaintiffs hereby stipulate and agree that once Engeo has complied with the  
18 foregoing paragraphs 3 and 6 of the Stipulation for Entry of Judgment, *Plaintiffs shall file a*  
19 *satisfaction of judgment with the Court.*

20 10. Engeo hereby stipulates and agrees that it will hold each of the Plaintiff Trust Funds  
21 harmless and indemnify them for any claim or suit, whether administrative or at law, by a third-  
22 party (or third-parties) who claims entitlement to fringe benefits not collected in the course of this  
23 settlement by the parties pursuant to the Stipulation for Entry of Judgment.

24 11. The parties agree that the terms of the Stipulation for Entry of Judgment shall be  
25 kept confidential and no party to this Stipulation shall disclose any of the terms without prior  
26 written consent from the other party or unless otherwise known to the public, except such  
27 disclosure as may be required by law, or as may be necessary or advisable to legal and accounting

1 advisors. This is a material term of this Stipulation any breach by Engeo and actionable as  
2 provided for in the foregoing paragraphs 2-7.

3 12. The Stipulation for Entry of Judgment is for the benefit of and binding on the  
4 parties, their heirs, successors, executors, administrators, and assigns.

5 13. The Stipulation for Entry of Judgment may be executed in counterpart, each of  
6 which shall constitute an original and with the same effect as if each party had signed the same  
7 copy of it and all of which taken shall constitute one and the same instrument. Each party shall be  
8 entitled to reply on facsimile or PDF copies of executed counterparts and such counterparts shall  
9 be legally effective to create a legal and binding agreement.

10 14. Engeo acknowledges to the Trust Fund that it has had the opportunity to be  
11 represented by independent legal counsel of its own choice throughout all of the negotiations that  
12 preceded the execution of this Stipulation for Entry of Judgment. Engeo further acknowledges that  
13 they have had adequate opportunity to perform whatever investigation or inquiry they may deem  
14 necessary in connection with the subject matter of this Engeo prior to its execution, and agree with  
15 the delivery and acceptance of the considerations specified in this Stipulation for Entry of  
16 Judgment.

17 The parties hereto mutually state that they have read the foregoing Stipulation for Entry of  
18 Judgment and are fully aware of its contents and legal facts.

19  
20  
21  
22  
23  
24  
25  
26  
27

28

1 Dated: \_\_ , 2005

ENGEO INCORPORATED, A California Corporation

2  
3 By: \_\_\_\_\_  
4 GAIL FITZSIMMONS  
Executive Administrator of Engco Incorporated

5  
6 Dated: 11/7/, 2005

OPERATING ENGINEERS LOCAL NO. 3  
TRUST FUNDS

7  
8 By: Wayne McBride  
9 WAYNE MCBRIDE  
Collection Manager for Plaintiffs

10 Dated: 11/10, 2005

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

11  
12 By: Nicole M. Phillips  
13 NICOLE M. PHILLIPS  
14 Attorneys for Plaintiffs

1 Dated: 12/21, 2005

ENGEO INCORPORATED, A California Corporation

2  
3 By: Gail Fitzsimmons  
4 GAIL FITZSIMMONS  
Executive Administrator of Engeo Incorporated

5  
6 Dated: , 2005

OPERATING ENGINEERS LOCAL NO. 3  
TRUST FUNDS

7  
8  
9 By: \_\_\_\_\_  
WAYNE MCBRIDE  
Collection Manager for Plaintiffs

10 Dated: , 2005

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

11  
12  
13 By: \_\_\_\_\_  
14 NICOLE M. PHILLIPS  
Attorneys for Plaintiffs

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
- 5 -

**PROPOSED ORDER**

The Parties having so requested, Judgment is hereby entered against Defendant Engeo Incorporated as set forth in the foregoing Stipulation for Entry of Judgment.

Dated: 11/23/05

  
\_\_\_\_\_  
MARILYN HALL PATEL  
UNITED STATES DISTRICT COURT JUDGE

- 6 -